

APPLICANTS:

Cecil Campbell & Beverly Campbell

REQUEST: Special Exceptions to permit commercial vehicle storage and construction services in the Agricultural District

BEFORE THE

ZONING HEARING EXAMINER

FOR HARFORD COUNTY

BOARD OF APPEALS

**HEARING DATES: May 2, 2007, June 13, 2007
and July 16, 2007**

Case No. 5582

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Cecil Campbell

CO-APPLICANT: Beverly L. Campbell

LOCATION: 1244 Ridge Road, Pylesville
Tax Map: 11 / Grid: 2B / Parcel: 41
Fifth (5th) Election District

ZONING: AG / Agricultural

REQUEST: A special exception pursuant to Section 267-53D(1) of the Harford County Code, to permit commercial vehicle/equipment storage; and a special exception, pursuant to Section 267-53H(1) to permit construction services, all in the Agricultural District.

TESTIMONY AND EVIDENCE OF RECORD:

Cecil Campbell, Co-Applicant, first testified. Mr. Campbell, his wife and mother have resided on the subject property since February 2005. The property itself is an 8.43 acre parcel improved by a single family dwelling and a 24 foot by 24 foot barn and is located on Ridge Road, Pylesville, Maryland. This area generally contains a mix of rural-residential and agricultural uses.

Mr. Campbell wishes to park company vehicles and run his family owned plumbing and heating business from his home. His application best summarizes his request:

"Operate a family plumbing and heating business out of my home. Store three commercial vans, one dump truck with trailer and one backhoe. All equipment will be garaged. I am currently in the process of constructing a 35 by 60 garage."

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Mr. Campbell described his business as primarily providing interior and exterior plumbing services to custom home builders. He is not a utility contractor, and does not install utilities. His business has three employees, plus the Applicant, and his mother works in the office. His employees consist of two mechanics and one helper. Mr. Campbell is hiring one additional helper so that each mechanic would then have one helper.

Mr. Campbell does not plan to enlarge his business. He has been doing this work for many years and plans to continue to operate at approximately the same size.

One of Mr. Campbell's mechanics takes his truck home every evening. The other mechanic usually comes to the subject property in the morning for his vehicle. Generally, one truck is always gone from the property.

Mr. Campbell has no retail sales. Customers do not come to his property. Mr. Campbell does some service work, but generally works on plumbing installation for builders. By stipulation (see Exhibit 12), the Applicants agree to the following limitation on vehicles to be stored on the property:

- * 2 box vans - G-3500 model.
- * 1 cargo van - G-3500 model.
- * 1 Ford L-8000 single axle, 40,000 lbs. capacity dump truck with flat bed and backhoe
- * 1 skid loader
- * 1 John Deere 770 garden tractor

The Applicants also assert that no fabrication or manufacturing would take place on-site.

Mr. Campbell explained that the dump truck is often kept at job sites. He is the only driver of this vehicle. His other employees do not drive the dump truck. The dump truck often pulls the backhoe. Again, only Mr. Campbell operates the backhoe.

The box vans are operated by the Applicant and one of his mechanics. The cargo van is generally taken home by his mechanic.

Mr. Campbell described the subject property as being in need of cleanup when he first purchased it. Since its purchase he has removed a substantial amount of junk and old buildings, and has relocated a portion of the driveway. Originally the driveway was, in places, very steep. Today it is safe for both residential and commercial vehicle use.

Mr. Campbell described his property as very isolated, with no house close to it. His house sits at an elevation of about 95' above the elevation of Ridge Road, and is surrounded by trees.

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While the application originally stated that all equipment will be stored within, and fully enclosed by, the 35 foot by 60 foot garage under construction, Mr. Campbell now believes that space will be somewhat confining. He requests he be allowed to store some vehicles around the north and west side of his garage, and lying immediately adjacent to the garage. This outside storage area is somewhat protected by a natural berm, and would be augmented by additional vegetative screening. The outside storage area is partly shown by that photograph of the backhoe parked next to the garage. (Applicants' Exhibit 9). This relatively small area will be totally screened by existing and supplemental screening, and no storage will take place here until plantings reach a sufficient height to provide full screening. No equipment can be seen from Ridge Road, even if not screened. He does not believe the equipment will be visible from any adjacent residential lot. The garage itself is at least 200 feet back from all property lines.

Mr. Campbell also identified on Attachment 2 to the Staff Report, which he described as an accurate site plan of the property, the location of his proposed outside storage.

Most of the material used by Mr. Campbell is delivered to the job site. Perhaps 10% comes to the subject property and is transported from there. He plans to store very little material on the subject property.

Mr. Campbell described Ridge Road as a winding, tar and chip roadway with a 30 m.p.h. speed limit. No schools, churches or improvements other than residential dwellings exist on Ridge Road. Farm vehicles use the road.

Mr. Campbell believes that access to his parcel from Ridge Road is provided, in part, by a right-of-way. He was unclear on the details of this right-of-way.

He believes that his proposed use, if screened as proposed, would have no adverse impact on the neighborhood.

The Applicant introduced a series of letters from the Galbraith family, which owns properties surrounding the subject property to its rear, and neighbors directly across Ridge Road from the subject property, all of which indicate their lack of opposition.

Under cross-examination, Mr. Campbell testified he had purchased the subject property about 2 years ago. He built his home himself, with help, and took approximately 11 months to do so. He and his family have lived on the property for about one year.

Large deliveries of pipe have never been made to the subject property.

The Applicant described the dump truck as being diesel powered; the backhoe is diesel powered. The back-up alarm on the skid loader has been disabled. If allowed, he prefers to store the trailer on which the backhoe is transported outside of and beside the garage.

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Mr. Campbell plans to store 2 cars, lawn mowers and personal vehicles inside the garage if allowed to have outside storage as proposed.

Other vehicles on the property include Mr. Campbell's mother's car, his wife's SUV, and Mr. Campbell's pick-up truck. The Applicant has had as many as 3 ATV's on the property, although only 1 was on the property the day of the hearing. His driveway is 12 to 14 feet wide, of gravel composition and extends approximately 200 feet from Ridge Road.

The previous location of Mr. Campbell's business was in Aberdeen, on properties zoned AG. He operated his business from that location for 10 years. Much of his equipment is now kept on his father-in-law's property in Aberdeen, which has proper zoning.

Mr. Campbell suggests that he plant Leland cypress as additional screening behind and to the side of his garage, if necessary. A neighbor could see the outside storage area in the winter if not screened, and if the neighbor walked up to the property line. The Applicant does not believe it will be visible in the summertime or if additionally screened.

Mr. Campbell is not sure who owns his driveway. He believes he has an easement but is not certain who owns the fee on which the driveway is located.

The Applicant indicated that all vehicles can be stored within the garage, but he would prefer permission to park at least some of them outside which would free up space in the garage for other storage. The trees now surrounding the garage are 60 to 100 feet tall, of 12 to 36 inch caliber.

Mr. Campbell performs no repair work on equipment on this property other than oil changes and other minor repair work. While he has no on-site fuel storage, he does have an approximately 80 gallon fuel storage tank on one of his pick-up trucks.

Next, for the Harford County Department of Planning and Zoning, testified Anthony McClune. Mr. McClune explained that the Applicants' equipment must be stored within an enclosed building or adequately screened. Mr. McClune believes that the outside storage, as proposed, would be screened from adjoining properties and the road. He sees no adverse use from the proposal, and believes it will comply with all standards of Section 267-9I of the Harford County Development Regulations. The Department accordingly recommends approval, with conditions.

The Department believes that the modification requested by the Applicants can be accommodated with outside storage being allowed provided the storage area is against the north garage wall only (long side wall), and not the westerly or short side wall (rear wall of the garage). Furthermore, no additional landscaping will be necessary if outside storage is only located along the one wall. Mr. McClune observed no plumbing parts during his site visit to the property.

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Next testified Larry Strader of 341 Heaps School Road, Pylesville, Maryland. Mr. Strader lives about one-half mile from the Applicants' property and travels Ridge Road regularly. Mr. Strader is a retired school teacher.

Mr. Strader's property is part of Grandview Farms, a 56 house subdivision established in 1969. Mr. Strader is President of the Grandview Homeowners Association. The Grandview subdivision extends along Ridge Road opposite the subject property and across Ridge Road into the west of the subject property. Lot 19 of Grandview Farms directly adjoins the easterly side of the Campbell property.

Mr. Strader testified for his Community Association. The Grandview Farms community wishes to preserve certain characteristics of its community and neighborhood. It is concerned about the traffic impact of the proposal of Mr. Campbell. Ridge Road is used by residents of Grandview Farms not only for vehicular traffic but also for pedestrian use. He believes any increased traffic would impact the safety of people using Ridge Road.

Mr. Strader introduced a copy of the Grandview Farms Declaration of Restrictions (Protestants' Exhibit No. 1). The witness believes the proposal by Mr. Campbell is in violation of Section 8 of the Restrictions, which prohibits commercial activity within Grandview Farms, and is a violation of Section 11, which prohibits waste on property within Grandview Farms. While these restrictions do not apply to the Applicants' property, Mr. Strader believes that the restrictions help establish the character of the surrounding neighborhood.

Mr. Strader is also concerned about employees, signage, and conflicts with school buses on Ridge Road which is treacherous and characterized by sharp curves. Twenty (20) m.p.h. is about as fast as a vehicle can travel on the road.

Mr. Strader knows of no other business between Routes 543 and 165 on Ridge Road. He knows of no other business uses close to his community. Furthermore, Mr. Strader and the Grandview Farms community are concerned about any increase in business. Mr. Strader asked that the application be rejected in order to help maintain the neighborhood values of Grandview Farms and the surrounding neighborhood.

On cross-examination Mr. Strader stated that his community consists of 59 lots, on which 56 homes have been constructed. The total size of the subdivision is around 300 acres. Mr. Strader agreed that no properly constituted meeting of the Homeowners Association was called to discuss neighborhood concerns.

In further defining his concerns and those of the community, Mr. Strader stated that the community is worried about additional vehicles coming to the subject property for delivery and other purposes. Mr. Strader's father was a plumber, Mr. Strader understands that customers may come to the subject property, and that waste is often stored on property utilized by plumbers.

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Next in opposition testified Dan Sutton of 4055 Heaps School Road. Mr. Sutton's parcel is approximately 6 acres in size. He has lived on his property for approximately 5 years. Mr. Sutton's 14 and 15 year old children ride the school bus.

Mr. Sutton described a series of photographs of the subject property, all of which were taken from or close to adjoining property lines, and some of which clearly show the garage. He believes that anything parked up against the short (rear) wall of the garage can be seen from the adjoining neighbor. Mr. Sutton's photographs were marked as Protestants' Exhibits 2A thru 2E. Mr. Sutton is concerned about vehicular traffic impacting his property and the safety of his children and other pedestrians in the area. He seeks to minimize traffic on Ridge Road. He also is concerned about employees of Mr. Campbell's business coming and going to and from the subject property and into the neighborhood, and the potential adverse impact and threat which he believes these may represent.

Ridge Road as it is currently utilized is safe for runners, walkers and other pedestrians. Mr. Sutton wants it to remain that way.

In opposition next testified Stephanie Ducote who resides on Grandview Drive with her husband and three daughters. Mrs. Ducote is a member of the Grandview Farms Improvement Association.

The witness opposes the application for the following reasons: Heaps School Road and Ridge Road are bordered by residentially used lots. While the area is zoned agricultural, the use is actually residential; undesirable traffic will be generated by the proposed use; the neighborhood is generally peaceful and quiet; Ridge Road has areas of limited sight distance which will increase accident potential; the long term impact of the use will be a degradation of property values.

In summation, the witness stated that the proposed location is not good for the proposed use, and the proposal is insensitive to the concerns of the neighbors.

Mrs. Ducote testified on cross-examination she cannot see the subject property from her parcel, although parts of it are visible from Ridge Road. She worries about the commercial vehicle component of the proposal, and is concerned about future expansion. The list of vehicles proposed to be maintained at the property is undesirable. While tractors and hay wagons use Ridge Road, that use is acceptable as it is an Agricultural District.

Next in opposition testified Loretta Winkler who has resided at 1226 Ridge Road since 1978. Ms. Winkler lives on a 7.39 acre parcel to the west of the subject property. She can see the house and the barn on the subject parcel, although only a portion of the barn is visible in the summertime due to foliage. In the wintertime she is able to see both the barn and the house.

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The witness believes that the equipment stored outside of the garage and to its northwest side would be visible from her property. Ms. Winkler is concerned about the proposal's impact on traffic and growth in the area. She described Ridge Road as a narrow road with limited sight distance. A stream is located on her property adjacent to the subject property. She is concerned about impact on the stream and associated buffers. She believes it is possible that "residue" from the plumbing business will seep into the stream.

Ms. Winkler's house is located somewhat to the northwest of the Applicants' barn, and at an elevation somewhat lower than that of the garage and house on the subject property.

Ms. Winkler repeated that she believes she will be able to see equipment parked to the north side of the garage now under construction. Going up her driveway to her home she is able to see the northwest corner of the garage.

Next testified Doug Howard, an owner of 1200 Ridge Road since 1970, and a resident for the last 14 years. Mr. Howard's parcel is located about six parcels to the west of the subject property, and consists of about 6-1/2 acres. He is also a member of the Grandview Homeowner Improvement Association, and is the Chairperson of the Whiteford Community Council. Mr. Howard is personally concerned about the commercial truck traffic to be generated by the proposed use. The proposed use is not in keeping with the neighborhood. Approval of the use would violate the master plan for the area. The use is also out of character with other uses along Ridge Road. The proposal of the Applicant would have less of an impact if located on a more traveled, less residentially populated road than Ridge Road.

Next testified Thomas Knott who offered a letter in opposition dated June 14, 2007 which was accepted as Protestants' Exhibit No. 4.

Next in opposition testified Michael Freye of 4048 Heaps School Road, who offered into evidence a letter of opposition accepted as Protestants' Exhibit No. 5.

Next testified in opposition Thomas Buchell of 4051 Heaps School Road. Mr. Buchell is in opposition due to the proposed use being out of keeping with the character of the neighborhood; and will adversely impact the very narrow road system with limited sight distances. Mr. Buchell likes the character of the neighborhood with its small and winding roads. He does not see many farm trucks. There are occasional accidents on Ridge Road.

Next in opposition testified Austin Stevenson of 4024 Grandview Drive who offered a letter in opposition which was accepted as Protestants' Exhibit No. 6.

Next in opposition testified Laura Moulton of 4060 Grandview Drive, located at the corner of Ridge Road and Grandview Drive. Ms. Moulton is opposed to the proposed use as she wishes to keep the area rural. Ridge Road is a very narrow road with blind curves. She believes the proposed use would have an adverse impact on traffic due to the character of Ridge Road.

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Next in opposition testified Bill Bridges who lives at 1245 Ridge Road, directly across Ridge Road from the subject property. Mr. Bridges described his house as being situated on a hill, at some elevation above Ridge Road.

Mr. Bridges is concerned about the character of the neighborhood. He believes the proposed commercial use will adversely impact the character of the neighborhood. He also believes that Ridge Road is a difficult and potentially dangerous road. He is not concerned about vans and pick-up trucks in the area. He is, however, concerned that the dump truck on the Campbell property is out of keeping with the area, and he does not believe it should be allowed. While commercial users are in the area, they are located on the more heavily traveled roads in the area.

Next in opposition testified Jack Dillon who was offered and admitted as an expert in planning and zoning with an emphasis in agricultural and rural zoning. Mr. Dillon stated that he is familiar with Harford County Development Regulations. Mr. Dillon explained that he is the former director of The Valleys Planning Council, which is a non-profit group concerned with the preservation and development of certain areas of Baltimore County. Approximately 95% of the Valley's Planning Council area consists of watershed and agricultural lands. He is accordingly familiar with issues involving these types of properties.

Mr. Dillon's understanding of the proposed use is that it is a commercial use which, if allowed, would be located within a predominately residential/rural area. Approximately 90 - 100 homes are in close proximity to the subject property, with large areas of agricultural use surrounding.

Mr. Dillon described the neighborhood as being a rural residential area developed into larger lots within the past 20 to 30 years. Houses are located at various distances from Ridge Road. The community is serviced by Red Road, Ridge Road and Heaps School Road. These roads are 15 - 20 feet wide, with open drainage areas and limited sight distances.

Mr. Dillon offered and described a series of photographs of the intersection of Red Road and Ridge Road, and of various aspects of Ridge Road in the vicinity of the subject property. These photographs were accepted as Protestants' Exhibits 13-19.

Mr. Dillon also explained that Ridge Road has a "crown" which he also described as being an "over vertical" in the vicinity of the Applicants' property. This crown or 'over-vertical' causes sight distance problems to one leaving the subject property and to motorists approaching the subject property from the Red Road side.

Mr. Dillon has reviewed the Harford County Master Land Use Plan. He understands that the Master Land Use Plan is a guide for land use decisions. The Master Land Use Plan provides certain guidelines upon which Mr. Dillon is relying his opinion. Among those guidelines are provisions that safe and sustainable communities should be encouraged and maintained; proper stewardship of resources should be encouraged; and existing communities outside of the community development envelope should be maintained and protected.

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Mr. Dillon believes that the area in which the subject property is located is an important agricultural area. The Master Land Use Plan, in his opinion, does not encourage commercial activity on agricultural properties. The subject property is not within a designated growth area. The Master Land Use Plan encourages the maintenance of the boundaries of village areas, which includes the Whiteford/Delta area.

Mr. Dillon argues that an inherent conflict exists between large commercial users and surrounding residential uses.

Mr. Dillon believes that the subject property is located in what is, in fact, a rural residential area. It is not a true agricultural area. The area is not an agricultural district as such due to the large number of home sites within that area. As a result, this is not a proper location for the commercial use proposed. The proposal should be located within a true Agricultural District, one which does not have the density of residential properties as does the subject neighborhood. The proposed use should be placed, not in a rural residential area, but rather in the rural village area just to the north which has other commercial uses located therein. A location within the rural village would also be in compliance with the Master Plan.

Mr. Dillon then discussed the standards set forth in Schultz v. Pritts. He reiterated that the subject property is not located within a true Agricultural District. The use is proposed at an inappropriate location. It would be better, less adverse, if such a use were located in a true agricultural area, one without an intensive residential component.

Mr. Dillon reiterated that traffic sight distances are not good along Ridge Road. The noise from the use will be annoying. The requested special exception is also inconsistent with the Master Plan, in Mr. Dillon's opinion.

On rebuttal, Mr. Campbell stated that his business employed only himself and three employees, although he would like to hire an additional helper in the future. The Applicant has been in business for twelve years and has never had more employees than he does now, nor more vehicles than he now has.

With respect to his dump truck, the Applicant stated that it cannot turn right onto Ridge Road because of a bridge farther down the road which is restricted to vehicles of 26,000 lbs. or less. The truck must turn left from the subject property.

When building his home the Applicant had cranes, cement trucks, and large dump trucks in and out of his property hauling materials, dirt and stone. None of the drivers of those vehicles expressed any problem with Ridge Road, nor did he notice any issues with the vehicles using Ridge Road. Approximately 30 - 40 large trees were removed from his property. The Applicant noticed no problems with log trucks navigating Ridge Road. The local fire department also burned the old house on the Applicants' property as an exercise and approximately 15 fire trucks were present, most of which were parked along Ridge Road. He observed no problems with traffic during the time those fire trucks were parked on the road.

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The Applicant described the topography of his property. From the back of the new garage, and for about 50 - 60 feet westward from that point, the ground is relatively level and then drops off radically, perhaps as much as 40 to 50 feet, down to a small stream which separates the subject property from that of Ms. Winkler. That stream area is very heavily vegetated and it is difficult if not impossible to walk through.

He believes Ms. Winkler can see the garage from her driveway but not from her house. Heading north from the shed on his property the topography rapidly gains elevation, reaching a point which is some 25 – 30 feet above the elevation of the garage. The new garage is about 24 feet tall. The Applicants' tallest piece of equipment is about 12 feet.

Mr. Campbell reiterated that he plans to store his equipment on the right, or north side of the garage, on a level parking area which he is excavating on that side. He believes his equipment can be stored there, in two lanes, side by side. He will then use the newly built garage for his personal vehicles and yard equipment.

The Applicant described his driveway as being at least 14 feet wide, with a surface of asphalt millings. According to the Applicant, the Huffers, who live between the Applicant and Ridge Road, support his application.

The Applicant believes that from the Bridges' property, located across Ridge Road, one may be able to see a portion of his old barn, but not the newly constructed garage.

Mr. Campbell described his plans to perform minor maintenance on his vehicles while inside the garage. That maintenance will include tire repair and rotation, lubrication of his vehicles, and other minor repairs.

The existing, older barn on the property, is used for miscellaneous storage.

Next in support testified Simon Tusha who resides at 1249 Ridge Road, directly across Ridge Road from the Applicants' property and next to the Bridges' property.

Mr. Tusha identified a long list of equipment which Mr. Tusha keeps on his property. He also identified various vehicles which have come and gone from his property, including large tractors and trailers and dump trucks which have visited his property for the purpose of delivering building materials. Mr. Tusha can see the old barn on the Applicants' property, but not the house and not the new shed.

Mr. Tusha does not oppose the request. He believes there will be no adverse impact if the Campbell proposal is approved. He believes it should be allowed as a matter of right. Mr. Tusha stated there will be many dump trucks coming into the Grandview subdivision in order to complete the lake renovation efforts which are planned. He believes there is about a 60 foot elevation change from the roadbed of Ridge Road to the Campbell property.

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Anthony McClune was next recalled by the Applicant. Mr. McClune explained that he had been employed by the Department of Planning and Zoning for 19 years, most recently as Deputy Director. He has been responsible for all Board of Appeals cases since 1995.

Mr. McClune was asked to respond directly to Mr. Dillon's arguments. In response, Mr. McClune stated that the proposed use is consistent with the Land Use Plan. He believes that the part of the County in which the proposed use is located is similar to much of the agriculturally zoned land in the northern part of Harford County. A review of the tax maps shows that residential development is present throughout the Agricultural District. The use is not incompatible with Ridge Road. There is no specific requirement within the applicable special exception which requires the use be on a particular type of road.

Mr. McClune has visited the property on three occasions. During winter, one can see a portion of the Winkler driveway from behind the new garage on the property, but one cannot see the Winkler house. Mr. McClune also stated that the garage itself is a permitted use, and its continued use is not dependent upon the granting of the requested special exception.

Mr. McClune also believes that the Schultz v. Pritts test is met. He finds no greater impact here than elsewhere in the zone.

Next in support testified Ronald Jones of 1234 Ridge Road. Relatives of Mr. Jones originally owned the Campbell property before it was purchase by the Campbells. Mr. Jones lives in the neighborhood and has long been familiar with the neighborhood. Mr. Jones occasionally brings tandem trucks to his home on Ridge Road. He has never had a problem with traffic in doing so. He confirmed that trucks cannot use the 26,000 lb. restricted bridge farther along Ridge Road. Mr. Jones sees no impact from the Campbell use and supports the application.

Testimony was then concluded.

APPLICABLE LAW:

These special exception requests are governed by Sections 267-53D(1) and 267-53H(1) of the Harford County Code:

"D. Motor Vehicle and related services.

(1) Commercial vehicle and equipment storage and farm vehicle and equipment sales and service. These uses may be granted in the AG District, and commercial vehicle and equipment storage may be granted in the VB District, provided that:

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- (a) *The vehicles and equipment are stored entirely within an enclosed building or fully screened from view of adjacent residential lots and public roads.*
- (b) *The sales and service of construction and industrial equipment may be permitted as an accessory use incidental to the sales and service of farm vehicles and equipment.*
- (c) *A minimum parcel area of two (2) acres shall be provided.”*

Section 267-53H(1) of the Harford County Code states:

“H. Services.

- (1) *Construction services and suppliers. These uses may be granted in the AG and VB Districts, provided that a buffer yard ten feet wide shall be provided around all outside storage and parking areas when adjacent to residential lot or visible from a public road.”*

Furthermore, Section 267-9I of the Harford County Development Regulations, Limitations, Guides, and Standards, is applicable to this request and will be discussed in detail below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicants request permission to conduct business operations on the subject property as special exceptions under Harford County’s Zoning Code. The uses for which Board of Appeals approval is sought consist of Mr. Campbell’s plumbing and heating business. That business employs four full-time workers, and operates certain vehicles, including a dump truck, trailer, skid loader, backhoe and 3 vans.

The use is to be located on a parcel which exceeds 8 acres in size and which is somewhat removed from Ridge Road. Adjoining the subject property to the west side and extending across Ridge Road from the subject property is the Grandview subdivision which consists of 56 improved, large lot home sites.

This request was vehemently opposed by some of the surrounding residents, particularly including the residents of the Grandview Community Association. The issues in dispute are those which are traditionally raised in this type of action and involve allegations of inappropriate use in the particular zoning district; increased traffic; and fears that this request is the beginning of increased commercialization of the neighborhood.

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In truth, however, the fears expressed by neighbors are almost wholly speculative in nature, and are not supportive of a conclusion that the proposed use is somehow worse at this location than it would be at one or more other locations within the zone. In fact, despite the concerns articulated by the neighbors, the evidence presented does not support a finding that the use will have any adverse impact.

It is important, in reviewing the conflict which surrounds the requested special exceptions, to bear in mind that special exceptions have been determined by the Harford County Council to be allowable, provided certain conditions are met. While discussed in more detail below, it is easily found that all applicable specific conditions can be met. Overlaying this initial analysis of the special exception requirements is the Schultz v. Pritts, 291 Md. 1, 432 A2d 1319 (1981) standard, formulated by the Court of Appeals, and uniformly applied in special exception cases. Briefly stated, despite meeting its specific requirements a special exception may not be approved if it has a more intense, more adverse, more harmful impact at a particular location than it would at other locations within the zone. As an example, gasoline service stations have certain real and potential impacts which are inherent and which they share with all other similar uses. However, such a use cannot be denied, if allowed as a special exception, simply because of those inherent, and shared characteristics. However, a particular service station, if proposed to be located directly next to an elementary school, could be denied if it is found that its impact at that particular location was somehow worse than at other locations within the zone, that is, at locations not next to schools.

However, no such finding can be made in this case. The relatively benign use of this 8+ acre subject property by a low intensity, limited, plumbing business cannot be found to have more of an impact, or less desirable effect, on surrounding properties than such a use would have at any other location within the zone. In truth, the use should have less of an impact at this location because of the particular characteristics of the property on which it is to be located, and because of the conditions which have been agreed to by the Applicant and which will be imposed herein.

The application must accordingly be approved, despite the arguments of the neighbors which are best summarized as follows:

- * That the proposed uses do not comply with the Harford County Master Plan Use Plan.**

The property is agricultural zoned. The 2004 Harford County Master Plan and Land Use Element Plan at page 42 states:

“It is important to note that the categories used on the Map are not meant to be exclusive, and it is not expected that the uses in an area will be limited to a single land use. For instance, while most commercial activity in the County is expected to be located in and around the centers referred to above, additional isolated

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commercial activity may occur throughout the low, medium, and high intensity areas. Such uses should be consistent with the definition of each category and compatible with adjacent uses. In addition, other land uses not directly related to agriculture may occur in the County's rural area so long as they do not significantly modify the character of areas outside of the Development Envelope."

As discussed above:

"A special exception is a use which has been legislatively predetermined to be conditionally compatible with the uses permitted as of right in a particular zone, the condition being that a zoning body must, in each case, decide under specified statutory standards the presumptive compatibility in fact exists."

See Creswell v. Baltimore Aviation Services, Inc., 257 Md. 712, 264 A.2d 838 (1970). See also Turner v. Hammond, 270 Md. 41, 310 A.2d 543 (1973).

It can accordingly be seen that the requested special exceptions have been found to be presumptively compatible with principal permitted uses allowed in an agricultural district.

Furthermore, this application cannot be denied on the basis that it does not, even arguably, comply with the Harford County Master Land Use Plan. The Land Use Plan is a guide, and cannot be the sole reason for denial of such an application. See Floyd v. County Council at Prince George's County, 55 Md. App. 246, 461 A.2d 76 (1983).

Accordingly, it can be seen that the use, which has already been legislatively compatible with permitted uses in the Agricultural District, is in compliance with the Harford County Master Land Use Plan and, even if not, non-compliance does not mandate denial.

*** That the area in which the subject uses are to be located is, actually, a rural residential area, and not a pure agricultural area.**

This argument would appear to be an attempt to create a distinction without a difference. The area is zoned agricultural. It contains both large open tracts and also relatively large residentially used lots. Certainly, the density of residential use in this area is not that of a typical, newly created subdivision of minimum lot sizes, and Ridge Road can surely not be compared to a typical subdivision street. While homes front and access Ridge Road, it remains a relatively typical County rural residential road, one used by all types of vehicles, including various types of farm equipment.

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It cannot be found that the proposed commercial use will be located in an area which is similar to relatively densely populated, small lot, recently subdivided areas of the County, even though certain agricultural areas of the County may be fairly described as having these characteristics. The subject property is 8+ acres with the proposed commercial activity having a very substantial setback from commercial uses. The property itself is located well off Ridge Road and is accessed by a right-of-way. The property sits within a relatively densely wooded area, and the visibility of adjoining property owners to the garage and stored equipment is highly limited by existing vegetation, and will be totally screened after supplemental plantings.

While there is a substantial residential component of the area, it cannot be said that this area is substantially different from many other agriculturally zoned areas of Harford County. Accordingly, the argument that this area is actually rural residential, and not purely agricultural, is not persuasive.

*** The proposed use will create additional traffic, and will contribute to unsafe conditions, on Ridge Road.**

There was testimony by opponents that Ridge Road is a relatively narrow, winding, County road with limited sight distances, particularly as one approaches the entrance of the subject property. This testimony is accepted.

However, these findings cannot be the basis for denial of the application. In truth, many County roads have similar characteristics, and similar special exceptions can be located, and in fact are located, on roads with similar conditions.

Furthermore, the occasional use of Ridge Road by the Applicants' dump truck and his three van type trucks is no different from the use of Ridge Road by any other similar contractor, or owner of similar vehicles. Indeed, the Applicant testified persuasively that his equipment will not be a burden to Ridge Road, that he has but two mechanics, one of whom generally keeps his vehicle at home, and the Applicant will not increase his fleet, nor increase the size of the vehicles which he now has.

Based on the evidence, there cannot be found to be a substantial, or even quantifiable, impact to Ridge Road by the use of the Applicants' vehicles, and there simply is no evidence to find that a dangerous traffic condition will result. Indeed, there was significant evidence to the contrary, that many large commercial vehicles have and do use Ridge Road without any sort of difficulty or complaint.

It is, according, found that evidence concerning the adverse impact of the use on Ridge Road, and the resulting safety problems, is speculative at best and cannot be a basis for a recommended denial.

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Addressing the specific requirements of the requested special exceptions, it is found that the Applicants can easily comply.

The specific requirements of Section 267-53H(1) are reviewed as follows:

H. Services.

- (1) Construction services and suppliers. These uses may be granted in the AG and VB Districts, provided that a buffer yard ten feet wide shall be provided around all outside storage and parking areas when adjacent to residential lot or visible from a public road.*

The subject property is located in an agricultural zone, and a buffer yard 10 feet wide has been provided.

The specific requirements of Section 267-53D(1) are addressed as follows:

D. Motor Vehicle and related services.

- (1) Commercial vehicle and equipment storage and farm vehicle and equipment sales and service. These uses may be granted in the AG District, and commercial vehicle and equipment storage may be granted in the VB District, provided that:*
 - (a) The vehicles and equipment are stored entirely within an enclosed building or fully screened from view of adjacent residential lots and public roads.*

The vehicles and equipment will be stored either entirely within the garage, or will be stored to the north side only of the subject property, as designated by Applicant on its site plan. It is found that the storage of a limited amount of equipment on the north side, in an area that is now highly screened by existing woods and to which the Applicant will add supplemental screening, will have no impact on the neighborhood, and will act as a screen to the neighbors property located directly to the west. Accordingly, it is found, with supplemental vegetation the vehicles and equipment will be fully screened from the view of adjacent residential lots and public roads.

- (b) The sales and service of construction and industrial equipment may be permitted as an accessory use incidental to the sales and service of farm vehicles and equipment.*

No sales and service is proposed.

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(c) *A minimum parcel area of two (2) acres shall be provided.*

The subject property is more than eight (8) acres in size.

Furthermore, the general requirements of the Limitations, Guides and Standards - Section 267-9I, are addressed as follows:

(1) *The number of persons living or working in the immediate area.*

While the Grandview Farms subdivision is located directly to the west and south of the subject property there is, as discussed above, no substantial difference between this area and other rural residential/agricultural areas of the County. The area contains a mix of rural residential and agricultural uses, and is located on Ridge Road, a paved, County maintained road. The proposed uses will have no impact on the people living or working in the area, nor will the surrounding community have an adverse impact upon the proposed use.

(2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

As discussed above, the potential impact on traffic which was articulated by neighbors as a major concern, is a speculative at best, and does not provide a basis upon which a finding of adverse impact can be made. While the Applicants' witness testified that sight distances as one approaches the subject property from the east is not good, the Staff Report indicates just the opposite.

In any event, there was substantial testimony that many commercial vehicles have and continue to use Ridge Road, and have done so without impact or apparent concern. While the potential for adverse impact on traffic safety is to be taken seriously, there is, in fact, no substantiation for such a finding in the instant case.

(3) *The orderly growth of the neighborhood and community and the fiscal impact on the County.*

The proposed use is a special exception which has been found by the Harford County Council to be generally compatible with other uses in the neighborhood. Accordingly, there is no real impact on the orderly growth of the neighborhood, and community, and there is no basis for a finding of adverse fiscal impact.

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- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

The garage in which the vehicles and equipment will be stored, and the parking area along side of the garage and just to its north, would be located at least 200 feet from the property to its east, and approximately the same distance from the property to the north and west, and approximately 700 feet from Ridge Road. While it is possible one or more neighbors will hear an occasional back-up alarm from either the dump truck or the backhoe, given the limited number of vehicles on-site, the agreement of the Applicants to do no manufacturing or fabrication work on-site, and the Applicants agreement to not increase the size of its commercial fleet, or individual vehicles, it appears unlikely that any significant impact from odors, dust, gas, smoke, fumes, vibration, glare or noise will be generated. Clearly, there is no credible evidence that any such impact would result.

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the County or persons to supply such services.*

The Harford County Sheriff's Office will provide police protection. The Whiteford Volunteer Fire Department will provide fire protection. The property is served by private well and septic.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

With conditions, as set forth above, the request is consistent with generally accepted planning principles and practices, for reasons more fully set forth above.

- (7) *The structures in the vicinity, such as schools, houses or worship, theaters, hospitals, and similar places of public use.*

No such structures have been identified.

- (8) *The purposes set forth in this Part I, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

For reasons set forth above, the proposal is consistent with the Harford County Master Land Use Plan.

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- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

No sensitive natural features or opportunities for recreation and open space have been identified.

- (10) *The preservation of cultural and historic landmarks.*

No such landmarks have been identified.

It can accordingly be seen that the application easily survives an application of the considerations of Section 267-9I.

Furthermore, and as was addressed above, the application must be reviewed in light of the standards of Schultz v. Pritts. For the reasons discussed above, the proposed uses will have no greater impact at the proposed location than at another location within the zone. Indeed, with proper conditioning, the impact should be minimal, at worse.

The concerns of the neighbors are understandable. However, requested special exceptions have been determined by the Harford County Council to be permitted when applicable conditions are met, and when it is found that the use, particularly as conditioned, will not have a more intense impact at the proposed location than at some other location. In light of all the evidence presented, it cannot be found that the proposed use violates any of the applicable standards, and accordingly it must be approved.

CONCLUSION:

Accordingly, for the above reasons it is recommended that the requested special exceptions be approved, subject to the following conditions:

1. The Applicants shall submit a detailed site plan to be reviewed and approved thru the Development Advisory Committee.
2. The approval is limited to the following vehicles:
 - * 2 box vans - G-3500 model.
 - * 1 cargo van - G-3500 model.
 - * 1 Ford L-8000 single axle, 40,000 lbs. capacity dump truck with flat bed and backhoe
 - * 1 skid loader
 - * 1 John Deere 770 garden tractor

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The Applicant may replace any vehicles, trailers and equipment as necessary. However, the number of vehicles, trailers and other equipment may not be increased, nor may the vehicles, trailers and equipment be increased in size and/or capacity.

3. The vehicles, trailer, equipment, and supplied used in the business shall be stored within the building or to the north (long side) of the building only, (not to the rear). Furthermore, said vehicles and equipment may not be stored outside until the Applicants supplement existing natural vegetation with additional screening so as to fully shield the proposed outside parking area from view from adjacent residential lots, particularly the lot to the west, and from public roads. Equipment shall not be stored in this outside storage area until specific approval is given by the Harford County Department of Planning and Zoning, and an affirmative finding has been made of compliance with this requirement.
4. This approval is for the Applicants' use only and shall terminate should the property be sold or transferred, or the Applicants transfer controlling interest in their business.
5. No more than four (4) full-time employees shall be employed by the Applicant, plus the Applicant, and an administrative person.
6. There shall be no manufacturing or fabrication on-site.

Date: October 17, 2007

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on NOVEMBER 15, 2007.